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MOTION FILED
NOV 20 1990

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,
Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Respondent

BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER AT PETITION STAGE

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MOTION FOR LEAVE TO FILE AND BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER AT PETITION STAGE

Now comes Barry D. Ammon, a duly licensed California attorney and moves for leave to file the enclosed Amicus Curiae brief in support of Petitioner.

This Motion is filed as the Respondent, Massachusetts Supreme

Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus is interested in the issues presented as an attorney in California affected by the grant or denial of this Petition. As herein described, he is concerned with the California statutes which delegate the People's power to private persons, which appears invalid under the nine different rationales Amicus researched in the decisions of this Honorable Court concerning the Unlawful Delegation doctrine. This analysis should be helpful to the Court in deciding to take the Petition and rule the Full

Faith Faith and Credit Clause and Comity do not permit a state to recognize an alleged State Bar Court of the California State Bar Association.

For the foregoing, Amicus requests leave of Court to file the attached Amicus brief concerning those issues, which have not been presented by the parties in this manner.

RESPECTFULLY SUBMITTED,

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AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

Interest of Amicus

Amicus is interested in the hearing of the Petition as a California attorney concerned about the rules and who licenses him.

He therefore submits the attached concerning the unconstitutionality of the State Bar Court under the Unlawful Delegation doctine. All references hereinafter to " section (s) " or " sec." refers to sections of the California Business and Professions Code.

ARGUMENT

The Statute creating a State Bar Court is an unconstitutional delegation of Public Power to private persons

The Due Process and Equal Protection clauses of the United States Constitutions prohibit state statutes which delegate to private persons the Public power of the People. Washington ex. rel. Seattle v. Roberge, 278 U.S.116 (1928).

At issue is a statute which provides, " The Board of Governors (of

the California State Bar Association) shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of section 6007 to the extent provided by rules adopted by the board of governors pursuant to this chapter. In these proceedings the State Bar Court may exercise the powers and authority vested in the board of governors by this chapter, including those powers and that authority vested in committees of, or established, by the board, except as limited by the rules of the board of governors within the scope of this chapter. For purposes of sections 6007,6049, 6049.2, 6050,

6051, 6052, 6077 (excluding the first sentence), 6078, 6080, and 6082, " board " includes the State Bar Court. Nothing in this section shall authorize the State Bar Court to adopt rules of professional conduct or rules of procedure. The Executive Committee of the State Bar Court may adopt rules of practice for the conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of procedure adopted by the board, unless approved by the Supreme Court." Section 6086.5.

Several serious constitutional issues arise. If the legislature may create a new court, but the Constitution provides the state bar is a corporation, may the legislature change the state bar from a

corporation into a court or authorize this corporation to create a court ? May it delegate the power to create a court to a private membership board of a bar association? May it delegate to private, unelected persons the making of a court ? May it transform a non-judicial body into a court ? May it create a court, whose composition is dependent, not on the voters, but on appointees or nominees of the private board ? May it create a court run and controlled by a private membership board ? May it create a court that is dictated to by the rules of procedure of a bar association and which may not establish or adopt either its own or the rules applicable to all other courts of law in the state ?

Art. 2, sec. 8 of the California Constitution states " All political power is inherent in the People. Government is constituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require."

Such is the rationale as to why the People have not authorized other private citizens to be allowed to take the liberty or the property of other citizens and which prohibit state-sanctioned branches of power delegating the People's express and limited authorization to them to those they have not authorized, to wit, private, non-publically responsible persons.

A. The Factual framework-the Board of Governors of the state bar are private people

The conceptual framework is muddied in dealing with the state statute permitting the 23 member Board of the California State Bar Association to create a State Bar Court. Sec. 6086.5.

The California state bar association is composed of private attorneys. Art. 6, sec. 9, Ca. Consti, yet its governing board includes six non - lawyers who are appointed by state governmental officials by statute. Sec. 6010-6015.

What permissible public auththority does the California State Bar have ? This Court's Keller decision indicates its role is not to be part of the government of a state, but to provide advices to those responsible for

governing the legal profession. Keller v. State Bar, (1990) 495 U.S.____, 110 L. Ed. 2d. 1, 110 S. Ct.____, overruling 767 P.2d. 1020, 255 Cal. Rptr. 542 (1989).

The California State Bar Association is constitutionally prohibited from admitting or disciplining attorneys. Sections 6067, 6078; Werner v. State Bar of California (1939) 91 P.2d.881, 13 C.2d. 666; Johnson v. State Bar of California, (1936) 52 P.2d.928, 4 C.2d.744; Fish v. State Bar of California,(1931)4 P. 2d. 937, 214 C.215.

Private attorneys are not elected to serve any public office for the people. They are those who are admitted to practice law for private or public suitors, at the at-

torney's discretion, solely by reason of qualification to serve as " Court Officers " under the jurisdiction of the judicial branch of government and by the act of admission by the state supreme court. Section 6064. The attorney's oath is a private oath that is inscribed on their license. Section 6067. That oath is to support the Constitution of the United States and of the State and to faithfully discharge their duties to the best of their knowledge and ability. Section 6067.

No where is there any oath to support any public entity or being. Confusion has arisen in California, unlike other states that recognize a bar association is solely a private group of opponents and compet-

itors, in that the legislature has passed statutes claiming the state bar is a " public corporation." Ca. Consti., Art. 6, sec. 9, and sec. 6001.

It is clear that the word, " public," refers to purpose and not power as the Public never authorized the state bar to perform any public functions for it. Art. 6, sec. 9, Ca. Consti.

The California Constitution gives the state bar no public authority. Art. 6, sec. 9, Ca Consti. Its role is advisory only. Hinds v. State Bar of California, (1941) 119 P. 2d. 134,; In re: Shattuck (1929) 279 P. 998,; Hogan v. State Bar (1951) 228 P.2d. 554,36 C.2d. 807.

What has occurred, however, is

that this limited public role of being advisory to the state supreme court in individual discipline, has been converted into a claim by the State Bar that they have other and multiple assigned public duties and roles, which the People have never authorized it to perform for them and which exceed any limited constitutional existence for said entity. Art. 6, sec. 9, Ca. Consti.

In all other respects, other than advices concerning individual discipline, they are solely private, unelected and non-accountable private persons, just like any other citizen who is not elected to office, not removable from office, and not accountable to any public will or mandate, and unaudited by

both the state and federal governments and not subject to any audit by its compelled membership. Sections 6010- 6015.

The Board is a mixed composition of attorney members who are elected by districts by other attorneys and political appointees of the governor, a person in the state senate and a person in the state assembly. Sections 6010-6015. One-fourth of the board (6 out of 23) are appointed by state politicians from other branches of government, not associated with the Judicial branch of government.

This places an irreducible pressure for the Judicial and limited role of the State Bar to be overcome with conflicting desires of those in the executive and legis-

lative branches of government who sit on this board. This placement of those in other branches of government in a governing posture to attorneys whose role is not in those branches of government is not by the will of the members but solely by legislative fiat. Sections 6010-6015.

Presently there are no rights to self-determination or open and equal voice of the compelled members. Sections 6010-6015.

What has never been addressed is that the legislature may have no right to dictate who sits in a private membership group. This appears ultra vires their limited role to pass statutes in aid of discipline of members, but not in contravention of the rights of the

private members to determine their own form of organization through their own self-determination and the duty of the private members to perform their duties solely in the judicial branch of government, and not be impressed into state service for the legislature.

Statutes, such as section 6031, in which the legislature wishes to specify the state bar have a role for it, appear unconstitutional as in direct violation of the intent of Art. 6, sec. 9 of the California Constitution that the state bar's role is limited to the Judicial branch of government and is not in any other branch of government.

B. The 9 purposes of the Unlawful Delegation of Public Power Doctrine apply to void the statute directing 23 private persons to create a court

The due process of law doctrine that prohibits statutes that unlawfully delegate to private persons the power of the People is grounded in a fear of private usurpation of public power without accountability

Such appears clear here. Amicus discerned, in this Honorable Court's decisions, 9 different rationales given for the doctrine. All appear to apply to invalidate the California state statutes, sections 6086.5 and 6079.1, permitting 23 private persons to create a State Bar Court and which preclude its recognition in another state.

1. Delegations to private people gives them authority no other private person can possess

Consistent with the idea that a public official has a limited pub-

lic role, and that, when he acts outside that role, he acts as a private person to whom the doctrine of unlawful delegation of public authority applies, a statute which delegated to an administrative officer in the executive branch the power to take railway property if and when he deemed it advisable was held to be void under the fourteenth amendment in Southern Railway Co. v. Virginia, (1933) 290 U.S. 190, at 194. Is this case not authority for the proposition that the advisory role of the California State Bar Association in individual discipline does not permit their private board to create their own Court ?

In the instant case, the power of the people to create their own

courts, which accrues to 30 million citizens under Art. 6, sec. 1, Art. 2, section 8, Ca. Consti. and Amendments five and fourteen of the United States Constitution is delegated first to approximately 80 assemblyman and 40 senators. Section 6086.5. Then this group of 120 delegate the power of 30 million to 23 private persons. These 23 have no constitutional authority to create a court. Art. 6, Sec.1 and 9, Ca. Consti. They, however, have purported to create a privately-run and privately-financed State Bar Court. Sections 6086.5, 6140.

The 23 persons then delegate to an alleged presiding judge of this alleged State Bar Court the power to choose " no fewer " than 7 other private persons, to set up and run

this private court. Sections 6086.5, State Bar rules of procedure, rules 110-112.

The power of 30 million is, in fact, diluted to one private person. He is not a judge as the voters have not authorized such a judge to exist in accordance with Art. 6, sec.16 of the California Consti.; sections 6086.5, 6010-6015; State Bar rules of procedure, rule 110-Composition of Executive Committee, and rule 111-functions.

The subdelegations are multiple and not based on an apparent logic. The alleged State Bar Court appears to be run, controlled and operated by 4 private persons- 4 non-judicial, lawyer or non-lawyer volunteers of the State Bar association. All but one is selected by an al-

leged presiding judge. He or She is never elected and not removable by the People as required by Art. 6, Sec. 16 of the California Constitution. He or she is solely appointed by the state supreme court. This appointment is solely through the pre-screening of the Board. The People of the state and the compelled members are allowed no input. The only input is from the State Bar prosecutors. The alleged State Bar Court appears run and manned by four private persons chosen on behalf of the State Bar prosecutors. (1)

The Presiding Referee who runs

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(1) Section 6086 states," The Executive Committee of the State Bar Court may adopt rules of practice ....The(y) may not conflict with the rules of procedure adopted (continued on next page)

the State Bar Court is referred to under Rule 2.22 of the State Bar rules as " the presiding officer of the Executive Committee."

The Presiding Referee appears to be chosen by the Board. Rule 101.

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(1) (continued from prior page) by the board, unless approved by the Supreme Court." Rule 110 provides, " The Executive Committee ..shall consist of no fewer than seven persons appointed by the presiding judge... Rule 111 states: " The Executive Committee " (1) shall be responsible for the administrative processing of all proceedings...(2) May issue policy memoranda or rules of practice ...within the jurisdiction of the State Bar Court..including...calendaring, extensions of time, continuances, entry of and relief from default for non-appearance, approval of agreements for stipulated facts and discipline, discovery motions and forms of process, notices, decisions and recommendations; 3) May provide formal programs for the information and training of newly appointed referees ... 4) Shall make statistical and other reports to the Board of Governors; 5) may create departments pursuant to rule 101; 6) may conduct studies and make plans and (continued next page)

2. The Unlawful Delegation doctrine is premised on not permitting a private person to ignore facts

Both the Southern Railway decision, supra, and Interstate Commission v. Louisville & N.R. Co., 227 U.S.88, 91, express concern that unlawful delegations to private persons permit a private person to

(1) (continued from prior page)

recommendations for the effective discharge of the duties of the State Bar Court." State Bar rule 112 provides that the Executive Committee may act on all of the above matters by a majority vote of 4 persons. The Presiding Referee presides on the executive committee, appoints committees, exercises " general direction over and supervision of staff attaches assigned to the State Bar Court;" provides for and supervises calendar management, and the assignment and calendaring of all matters within the jurisdiction of the State Bar Court (and) provide (s) for and supervises the assignment of referees to departments and panels; represents the State Bar Court in State Bar budgetary matters. State Bar rule of procedure, rule 113.

ignore the facts of a matter. Applicable to this case, it would appear that private volunteers who are not pre-screened for competency may ignore facts and take careers.

3. The Unlawful delegation doctrine is concerned with private persons ignoring the rules of evidence

Two aspects are applicable to the statute creating a State Bar Court which involve the concern of a private person ignoring rules of evidence. The first concern was above stated in Interstate Comission v. Louisville & N.R. Co., 227 U.S. 88, 91, as follows:

" It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat."

The second concern is that these private persons may create a court

with no adherence to the rules of any other court. It has exempted itself from the rules of due process, including those of evidence, applicable to all other courts. Sec. 6001. It has exempted itself from the Rules of Court applicable to all other courts as well as the constitutionally-mandated jurisdiction of the Judicial Council and its required rules for all courts. Section 6001; California Rules of Court, and Ca. Consti., Art. 6, sec. 6. Although the State Bar is an administrative arm to the state supreme court, it has also exempted itself from the required rules applicable to all other state administrative agencies and boards, which are governed by the administrative procedures act. Sec. 6001.

In fact, the State Bar Court is already governed by rules that are in conflict with and contrary to the established rules of evidence for all courts. Whereas hearsay is inadmissible in a court of law, unless there is a recognized statutory exception, the Conway v. State Bar decision at 47 Cal. 3d. 1107, allows the taking of careers by a volunteer of the alleged State Bar Court on hearsay. Evidence Code sections 702, 1200.

Whereas cross-examination and confrontation have been held to be constitutionally required for all courts, as part of the constitutional protections due lawyers, Wilner v. Committee of Bar Examiners, 373 U.S. 105, and state law provides that " At the trial of an

action, a witness can be heard only in the presence and subject to the examination of all the parties to the action...," the State Bar Court claims it is controlled by state statutes and rules that abrogate those constitutional and statutory protections for lawyers. Conway, supra.

Thus, the fear that unlawful delegations of power to private people will result in non-adherence to established rules, either of due process or of evidence, is a reality in the operations of the alleged State Bar Court.

4. The Unlawful delegation doctrine is concerned with avoidance of hearings or inadequate or manifestly unfair hearings

When private, unsupervised, and unmonitored persons who are not

publicly accountable, either by voter approval or by state supervision or audit, are given power, they tend to exercise power without prudence or restraint. This principle was best stated in Freedom v. Maryland, 380 U.S. 51, 85 S.Ct.734, 13 L.Ed. 2d 649 (1965). The court invalidated a system such as " involuntary, inactive enrollment" as an invalid prior restraint and stated the reasons therefor as follows:

" Unlike a prosecution for obscenity, a censorship proceeding puts the initial burden on the exhibitor or distributor. Because the censor's business is to censor, there is the danger that he may well be less responsive than a court - part of an independent branch of government - to the constitutionally protected interest of free expression And if it is made unduly onerous, by reason of delay or otherwise, to seek judicial review, the censor's determination may in practice be final."

Thus, when prior restraints on constitutionally protected rights are involved; a) the burden is on the censor to prove the conduct is not protected and not on the attorney to prove it is protected, b) the censor is not permitted to alter the status quo, to wit, the right to work, c) the censor either allows the continuation of the protected activity or goes to court to attempt to restrain the right to work, and d) in all events, only a prompt and final judicial determination in an adversary proceeding, satisfies due process of law. Only the Court has the necessary sensitivity to freedom of expression. Only a procedure that ensures a judicial determination may impose a valid, final restraint.

The rationale behind voiding unlawful delegations of power to private persons, such as the ability to create a court, is because they tend to exercise maximum power, rather than possessing the required balance and attendance to the independence of the Judiciary required of all courts of law.

That unrestrained power is being exercised by the State Bar Court is evidenced by its abolition of some hearings and of state and constitutional law notice and service requirements. When hearings are allowed, they are not subject to the norms of procedural and substantive due process of law applicable to hearings in a court of law. (2)

(2) The involuntary inactive enrol-
(continued next page)

When private people wield public power, these dangers are common.

5. The Unlawful delegation doctrine is concerned with Capriciousness and self-interest

Statutes which delegate public power to private persons are unlawful as they encourage capriciousness and self-interest. This principle was best stated in Seattle, supra, at p. 120:

" The section purports to give the owners of less than one-half the land within 400 feet ...- uncontrolled by any standard or rule prescribed by legislative action-

(2) (continued from prior page) lment statute has no notice or hearing standards. It thus appears facially unconstitutional. Coe v. Armour Fertilizer Works (1915) 237 U.S.413. State Bar Rules 789-799, provide for notice by a mailing without proof of receipt, permit a disqualified prosecutor claiming to mail the original notice, waive hearings by silence, deny confrontation and cross-examination, and allow any non-lawyer volunteer to take careers ex parte for his Harm to his " Public." Conway, supra.

> the power to prevent the trustee from using its land for the proposed home...They are not bound by any official duty, but are free to withold consent for selfish reasons or arbitrarily and may subject the trustee to their will or caprice. Yick Wo v. Hopkins, 118 U.S. 356, 366, 368. The delegation of power so attempted is repugnant to the due process clause of the Fourteenth Amendment. Eubank v.Richmond, 226 U.S. 137,143. Browning v. Hooper, 269 U.S. 396."

In this case, the statute permitting 23 private persons to create a court permits the claims of judicial powers that normally accrues to real courts of law to be possibly used for selfish and capricious purposes of the 23, for friends or family members or business associates. The involuntary inactive proceedings are based on taking the right to work of any attorney by any volunteer of the alleged State Bar Court on a vague and indefinite

standard which permits any selfish, self-motivated private person to destroy any career for conduct posing a substantial threat of harm to the interests of his personal, private and subjective " Public." Sections 6086.5, 6007 (c).

By not only delegating to the 23 private persons the ability to create a court, but also their ability to delegate their offical board functions to it, this replaces a 23 member board's required action with the action of only one volunteer of the State Bar Court. Section 6086.5, State Bar rules of procedure, rules 789-799. This leads to that which was condemned in both Washington supra, and the Southern Railway decision, supra: uncontrolled capriciousness.

6. The Unlawful delegation doctrine is concerned with the arbitrary exercise of power

As in Yick Wo v. Hopkins, 118 U.S. 356, an ordinance which forbids a thing, but then gives unfettered discretion to others to waive the prohibition for those whom it pleases, leads to the exercise of arbitrary power. The statute allowing 23 private people to create a court, but they then, by rule, delegate to the State Bar prosecutorial unit the power to establish the rules of this alleged court, permit arbitrary and unequal applications of the law to different attorneys.

Section 6001 exempts the State Bar, which includes its alleged State Bar Court, from the due process restrictions applicable to all courts and state bodies. Then

State Bar rule of procedure, rule 556, states that the " rules of evidence are generally applicable." It then states the rules of evidence do not apply to rule 555 proceedings. That means if an unscrupulous or bribed examiner claims he mailed a letter, but he did not do so, that when he then takes the attorney's default without notice, that he may then enroll the attorney as inactive, bankrupting the attorney without notice or hearing and recommend disbarment without any adherence to any rules of evidence and without any evidence. State Bar rule of procedure, rules 555, 789-799.

Rule 556 goes on to state that " the rules of evidence in civil cases in courts of record in this

state shall generally (emphasis added) be followed." What is generally followed ? Sometimes ? Not at all ? If the volunteer feels like it ? The State Bar Court rules give unbridled discretion in its personnel to violate the rules applicable and which are binding on all courts of law and administrative bodies and deny any attorney the right to have the rules of evidence applicable to him.

The dangers of an unbridled court which knowingly claims it is not bound to follow rules applicable to courts of law is that it is seeking to change, not just its title, but the due process rights of attorneys to be judged by a competent court of law with with the required De Novo review of facts and the law.

Instead of the required standard of review of De Novo, which applies to review of licensing by administrative agencies by a court of law, it appears to seek to impose on lawyers an " abuse of discretion " standard. This would appear to eliminate review for error of law or under the " substantial evidence" test. State bar rule 556 appears to invalidate not only the De Novo review required standard, but impose solely an " abuse of-discretion " standard, when a court of law reviewing a lower court is not bound to that sole grounds of review. Brotsky v. state bar (1962) 19 Cal.Rptr. 153, 368 P.2d. 697, 57 C.2d. 287, 94 A.R.R. 2d.1310; Chronicle Publishing Co. supra.

In Furman v. State Bar of California (1938) 83 P.2d.12, 12 C.2d. 212, the court stated, " A disbarment proceeding is quasi-criminal in character and, although it is not essential that the guilt of the accused be established beyond a reasonable doubt, nevertheless his guilt must be established by convincing proof to a reasonable certainty." State Bar rule of proceddure rule 555 appears to seek to overrule that decision. (3)

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(3) The rules of the State Bar Court are written by the prosecutors. State bar rules of procedure, Rules 460-464, which permit the prosecution to collect costs if an attorney is found guilty of one charge, while denying to attorneys their right to collect their costs on all charges in which they are exonerated, suggests a denial of equal protection of the law. Refer Tumey v. Ohio, 73 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927) prohibiting such a court with pecuniary interest.

In Nashville Chattanooga & St. Louis Railway v. Walters, Commissioner of Highways, et. al. 294 U.S.405,(1935), the court considdered whether the legislature could require a railway company to pay one-half of the expense of obviating a grade crossing. The Court stated that, although a statute may be perfectly valid on its face, yet, applied to given facts, be invalid. The Court went on to state that " the police power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably," at p.415. In Fuentes v. Shevin, 407 U.S. 67, 93, the United States Supreme Court condemned state law which delegated to private persons the power to perform state functions, as follows

at p.93:

> " The statutes, moreover, abdicate effective state control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. There is not even a requirement that the plaintiff provide any information to the court on these matters. The State acts largely in the dark."

To like effect are Mitchell v. W. T. Grant Co., 416 U.S. 600, 615-617; Gibson v. Berryhill, 411 U.S. 564, 578-579.

7. The Unlawful delegation doctrine is concerned with the denial of proper judicial investigation

The statute permitting 23 private persons to create a privately-financed private court peopled with alleged " judges" solely of its own

selection and no general in-put and no voter approval runs afoul of the unlawful delegation of power doctrine as it denies to attorneys, witnesses, clients and the Public rights to proper judicial inquiries.

In Chicago M. & St. P. Ry. Co. v. Minnesota, 134 U.S.418, 457, 458, an act of the Minnesota legislature which permitted a commission to finally fix railway rates without notice was declared invalid as follows:

> " It deprived the company of its right to a judicial investigagation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission which, in view of the powers conceded to it by the state court, cannot

be regarded as clothed with judicial functions or possessing the machinery of a court of justice... "

It is clear a state statute allowing private, unregulated, unmonitored and unsupervised persons the power to create a private court ignores the proper and acceptable, democratic method of creating judicial machinery.

8. The Unlawful Delegation of public power to private persons prohibits competitors and opponents running a private court to remove each other

Much of the concern that the unlawful delegation doctrine addresses is that private opponents and competitors will thereby be permitted to treat their own competition or opponents unfairly. This is both an offshoot of the requirement that those who take

property must be neutral, detached, and not personally or financially involved as a component of due process of law, Gibson v. Berry-hill, supra, and the necessary enforcement of the prohibition of the Sherman Anti-trust Act, which outlaws all " combinations and conspiracies in restraint of trade," and which questions the concept of " state bar courts."

It is similar to the prohibited takings of a doctor's right to work in a hospital by a " peer review " panel run by the doctors's com petitor doctors. Patrick v.Burget, U.S. 1988, 108 S.Ct.1658, 100 L.Ed.2d 83, rehearing denied, 108 S. Ct. 2921, 101 L. Ed. 2d 952, on remand, 852 F. 2d 1241; Tambone v. Memorial Hospital for McHenry

County an Illinois corporation, 635 F. Supp. 508 (N.D.Ill.), Posner v. Lankenau Hospital, E.D, Pa. 1986, 645 F. Supp. 1102; refer sections 6007 (c), 6125, 6126 (b).

The state statute permitting only 17 private opponents and competitors of other lawyers, togeth with 6 lay persons appointed by state representatives of the Executive and Legislative branches, to create a private competitor and opponent court empowered under sections 6007 (c) and 6084, to disbar or suspend the right to work of any of their own opponents and competitors appears prohibited as the unlawful delegation of public power to private opponents and competitors. (4)

The principle was well stated

in Carter v. Carter Coal Co. et. al. v. Helvering, Commissioner of Internal Revenue, v. Carter et. al., 298 U.S.239 (1936), as follows, at p. 310-311, wherein the

(4) Amicus believes the Lebbos' facts suggest the State Bar Court violates the Sherman Anti-Trust Act. The letter from the state bar court to the state supreme court identifies the state bar's complaining witnesses as Attorneys John Miller, Maryann Grilli, and Jeradlin Spradlin. They are her opponent and the defendant attorneys in her 1986 federal suit now pending. Lebbos v.Judges, Santa Clara Superior Court, 883 F.2d.810 (Ninth) (1989). At the same time, the state bar that brought the charges was also the defendant and opponent to Lebbos in her action to void their entry in 1986 of an ex parte $ 32,676 judgment. Lebbos v. State bar, Sixth Appellate District Court, Docket no. H003074.

The decision for Lebbos in the Sixth Appellate District and in the Ninth Circuit against the state bar and against their complaining witnesses suggest the charges may have been filed in an effort by these opponents to prevent Lebbos from prevailing against them in the state and federal courts of appeal.

Court invalidated a scheme where a majority of manufacturers could set the hours and wages of workers of other manufacturers. In doing so, the Court stated the following :

" ...in the very nature of things, one person may not be entrusted with the power to regulate the business of another, and especially of a competitor. And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the fifth amendment, that it is unnecessary to do more than refer to decisions of this court which foreclose the question. Schecter Corp v. United States, 295 U.S., at p. 537; Eubank v. Richmond, 226 U.S.137, 143; Seattle Trust Co. v.Roberge, 278 U.S. 116, 121-122."

9. Statutes without standards are an Unlawful Delegation

Statutes are unconstitutional when they delegate public power to others and have inadequate stan-

dards or guidelines. Bock v. Lompoc City Council (1980) 167 Cal. Rptr. 43, 109 C.A. 3d. 52.

The statute directing the Board of the State Bar to create a State Bar Court has no standards, no guidelines, no safeguards.

Conclusion

Amicus requests this Honorable Court hear the Petition and rule that the United States Constitution does not permit a state to recognize a private bar association court created by 23 private citizens.

RESPECTFULLY SUBMITTED,

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